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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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CS Docket 96-119

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re)

Amendment of Section 76.51)

of the Commission's Rules to)

Include Dubuque, Iowa, in the)

Cedar Rapids-Waterloo, Iowa)

Television Market)

COMMENTS OF DUBUQUE TV LIMITED PARTNERSHIP

These Comments are submitted on behalf of Dubuque TV Limited Partnership, licensee of Station KFXB(TV), Dubuque, Iowa ("Dubuque TV"), in the above-captioned proceeding. For the reasons set forth below, Dubuque TV submits that the proposal to add Dubuque, Iowa, to the "Cedar Rapids - Waterloo" Iowa television market should not be adopted.

I. Preliminary Statement.

The Notice of Proposed Rulemaking in this proceeding (the "Notice") was issued in response to a Petition for Rulemaking filed by Cedar Rapids Television Company ("CRTV"), licensee of television station KCRG-TV, Cedar Rapids, Iowa. CRTV is seeking to have Dubuque added to the Cedar Rapids-Waterloo television market so that it can gain nonduplication and syndicated exclusivity protection on cable systems serving the Dubuque area. CRTV claims that the change in market designation is warranted because television stations in Cedar Rapids, Waterloo, and Dubuque compete against one another and these three communities are "economically interdependent."

In the Notice, and in rulings on requests for changes in market designations, the Commission has made it clear that the inclusion of more than one community in market designation "is based on the premise that

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stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities" and that the "underlying competitive purpose of the market hyphenation rule [is] to delineate areas where station can and do both actually and logically compete." Based upon the representations made by CRTV in its Petition, the Commission found that CRTV had made a sufficient preliminary showing that redesignation of the market exist would be consistent with the purposes of the market hyphenation rule as to warrant an in depth examination of the proposal in a rulemaking proceeding.

As will be shown in these Comments, the proposed change in market designation should not be adopted because the two major premises on which CRTV based its request for a change in market designation -- that television stations licensed to all three communities compete with one another and that the three communities are economically interdependent -- are false. Television stations in the three communities do not all compete against one another. Indeed, due to coverage limitations, it is inconceivable that KFXB could ever become a competitive factor in the Waterloo or Cedar Rapids markets. Additionally, Dubuque is not "economically interdependent" with Cedar Rapids or Waterloo.

II. Discussion

A. Analysis of the Proposal Under the Four Factors the Commission Utilizes to Evaluate Requests for Hyphenated Markets

The Commission has identified four factors which help it in evaluating whether stations licensed to different communities actually and effectively compete with one another such as to warrant treating the

communities as a single television market. The applicability of each of these four factors to the case at hand is addressed below:

(1) The Distance Between the Existing Designated Communities and the Community Proposed to Be Added to the Designation

The distances between the Waterloo and Cedar Rapids, the two currently designated communities, and Dubuque, the community proposed to be designated are 85.2 miles and 62.8 miles, respectively.¹ CRTV contends that "Cedar Rapids, Waterloo and Dubuque are in close geographic proximity." Whether communities are, or are not, in "close geographic proximity," is a relative and subjective matter. As compared to the proximity of Dubuque to Los Angeles, or Hong Kong, Dubuque is indeed in relatively close proximity to both Waterloo and Cedar Rapids whether the questionable distances between the communities stated by CRTV or the actual distances city center to city center are used. However, for the purposes of determining whether the communities are in such close geographic proximity as to warrant combining them in a single television market, it is evident that they are not.² The distance between Dubuque and Waterloo is approximately the same as the distance between

¹These are the distances between the main post offices in each community as specified by geographic coordinates and as calculated using a computer program. CRTV claims in its Petition that the distances between Dubuque and Waterloo and Dubuque and Cedar Rapids were only 75.6 miles and 54.3 miles, respectively. CRTV did not state how it determined these distances; however, using and *Rand McNally Road Atlas* and a set of dividers, it is obvious that the distances between Dubuque and the other two communities are approximately the distances, city center to city center, that were derived using the main post office geographic coordinates and a computer program to compute the distances.

²In *Amendment to Section 76.51 to Include Goldsboro, NC, in the Raleigh-Durham, NC, Television Market*, 9 FCC Rcd 4387 (1994) the Commission added Goldsboro to the market designation despite the substantial distance between the communities (56 miles) based on the facts that the coverage areas of all of the stations to be included in the combined market substantially overlapped and did actually compete with each other throughout the proposed combined market area.

Philadelphia and New York, and the distance between Dubuque and Waterloo is more than twice the distance between Baltimore and Washington. No one would suggest that New York and Philadelphia or even Washington and Baltimore are in such "close geographic proximity" as to warrant combining these pairs of communities in a single television market. In so far as distance between communities is a relevant factor in determining whether communities should be combined in a single television market, the distances between Waterloo and Dubuque and Cedar Rapids and Dubuque are such as to weigh heavily against such combining.³

(2) Whether Cable Carriage, if Afforded to the Subject Station, Would extend to Areas Beyond its Grade B Signal Coverage Contour.

Curiously and significantly, CRTV did not discuss this factor in its Petition. The fact is that adding Dubuque to the designated market would enable KCRG-TV to demand carriage on cable systems in areas which are beyond the station's Grade B contour. It would also enable KFXB to demand such carriage in areas far beyond its Grade B contour, but as KFXB is not an effective competitor in those areas, the marginal benefits that it would gain from being able to demand such carriage are far outweighed by the adverse competitive impact that it would suffer in its home market from KCRG-TV and the other Waterloo and Cedar Rapids stations being able to compete with it in that market on an entirely equal footing.

(3) The Presence of A Clear Showing of a Particularized need by the Station Requesting the Change of Market Designation

³ CRTV identifies in a footnote the U.S. Highways that connect the three communities in question. It could also be noted that Dubuque is connected to Rockford and Chicago, Illinois, to the East by U.S. Route 20 and that Waterloo is connected to Memphis, Tennessee, to the South by U.S. Route 63. In a nation interlaced with interstate highways, it is not surprising, or relevant, that there are direct highway connections between the subject communities.

CRTV claims that if Dubuque is not added to the local television market designation, "KCRG-TV will suffer competitive injury" by not being "able to prevent the cable system serving Dubuque from importing the distant signal of ABC affiliate WQAD-TV, Moline, Illinois" and by not being able to "prevent the Dubuque cable system from importing the signals of distant stations carrying syndicated programming also carried by KCRG-TV." The "competitive injuries" are not unique to KCRG-TV in the situation that it faces in Dubuque. Rather, they are facts of life for all stations which, though significantly viewed in a market, are not local signals in the market.

Moreover, although CRTV characterizes WQAD-TV as a "distant signal" in the Dubuque cable market, WQAD-TV is hardly more "distant" than is KCRG-TV as the distance from KCRG-TV's community of license to Dubuque is only 6.1 miles less than the distance from WQAD-TV's community of license to Dubuque (62.8 miles vs. 68.9 miles). Additionally, as discussed below, while WQAD-TV's community is roughly the same distance from Dubuque as is KCRG-TV's, there is more of a community of interest between Dubuque and the "Quad Cities" (of which Moline is one), all river communities, than between Dubuque and Cedar Rapids.

In support of its claim that KCRG-TV will "suffer harm" if the proposed change in market designation is not adopted, CRTV states that until recently KCRG-TV "benefited" from the fact that KFXB (formerly KDUB) was an ABC affiliate and the nonduplication protection accorded KFXB kept WQAD-TV's ABC programming off the Dubuque cable system. How could KCRG-TV possibly have "benefited" from the fact that the local cable system carried a local ABC affiliate (KDUB) rather than a distant

one? Surely the local ABC affiliate was a stronger competitor for advertising in or adjacent to ABC programming in the Dubuque market. If anything, the recent change in affiliation benefited KCRG-TV.

Finally, the fact that KFXB was able to retain an ABC affiliation in the Dubuque market notwithstanding KCRG-TV's significantly viewed status is compelling evidence that ABC did not regard Dubuque as part of the Cedar Rapids - Waterloo television market.

(4) Benefit to the Public from the Proposed Change

The only benefits that CRTV claims will inure to the public if the proposal at issue is adopted is that it will be "encouraged to invest in network, syndicated and local programming that caters to Dubuque residents" [emphasis added], whereas if the FCC denies its request to add Dubuque to the market designation "it would jeopardize the continued viability of KCRG-TV's local programming directed to Dubuque." Significantly, CRTV provides no information as to how much, if any, "network, syndicated and local programming that caters to Dubuque residents" is currently being provided by KCRG-TV, or the extent to that the network and syndicated programming is provided by other stations. Moreover, CRTV's implied threat to discontinue local programming directed to Dubuque if its request is not granted is not credible since, in so far as KCRG-TV is providing such local programming, it is obviously doing so in order to draw Dubuque viewers and advertisers and, by CRTV's own admission, KCRG-TV is quite successful at drawing Dubuque viewers and advertisers.

(B) Other Relevant Factors

The issue before the Commission is whether there is a

sufficient equality of competition between KFXB and the stations licensed to Cedar Rapids and Waterloo and a sufficient "commonality among [the three] communities" to justify adding Dubuque to the Cedar Rapids - Waterloo market designation. The following facts establish that neither the requisite equality of competition or commonality of interests exists.

(1) Lack of Equality of Competition

The KFXB and KFXA (formerly KOCR-TV) coverage maps included with CRTV's petition clearly reflect that KFXB does not provide Grade B coverage to Cedar Rapids or Waterloo⁴ and that KFXA does not provide Grade B coverage to either Waterloo or Dubuque.⁵ KFXB is not now, and never has been, carried on cable systems in either community and it has few, if any, viewers, and no local advertisers in either community. Moreover, it is obvious from even a cursory review of the coverage maps for KFXB and those of the Cedar Rapids and Waterloo stations attached with CRTV's Petition that KFXB only provides service to a small portion of the total areas served by these other stations. KFXB draws its audience and advertisers primarily from four counties, Dubuque and Jackson in Iowa, Jo Daviess in Illinois and Grant in Wisconsin. KFXB does not compete for viewers or audience in any of the other 21 counties included in the Cedar Rapids - Waterloo DMA. Jo Daviess County, Illinois, is in the Davenport, Iowa, DMA and Grant County, Wisconsin, where KFXB's tower is located is in the Madison, Wisconsin, DMA.

⁴KFXB recently filed an application for a construction permit to improve its facilities. However, the facilities proposed in this application will not extend KFXB's Grade B contour to Cedar Rapids or Waterloo.

⁵KFXA has an application for improvements in its facilities which, if the application is granted and the proposed facilities are actually constructed, will result in KFXA providing city grade coverage to Waterloo but will still leave its Grade B contour more than 20 miles short of Dubuque.

In all cases where the Commission has added an additional community to a market designation, it has found that the coverage areas of all of the stations substantially overlap and that all of the stations do, in fact, compete with each other throughout the proposed combined market area. See, e.g., the cases cited at Notes 3 - 5 to CRTV's Petition. On the other hand, in a case which is factually on all fours with this case, *Television Muscle Shoals, Inc.*, 48 RR 2d 1191 (1981), the Commission denied a request to add Florence, Alabama, to the Huntsville-Decatur, Alabama, television market.⁶

CRTV claims that the fact that KFXB has entered into an agreement with the licensee of Station KFXA, Cedar Rapids, Iowa, which, like KFXB is a Fox Network affiliate providing for joint programming and marketing of the two stations has placed both KFXA and KFXB in head-to-head competition with KCRG-TV and the Waterloo stations for "the same viewers and advertising dollars." This is a gross distortion both of the nature of the agreement between KFXB and KFXA and the combined coverage areas of the two stations. As noted above, KFXA does not currently provide Grade B coverage to either Dubuque or Waterloo. Moreover, the agreement which CRTV alludes to is a time brokerage agreement pursuant to which the licensee of KFXA purchases time on KFXB for the presentation of programming. This time brokerage agreement in no way makes KFXB a competitor in Cedar Rapids or Waterloo and, in view of KFXA's limited coverage, that station also is currently not a competitive factor in

⁶As is in this case, the television station licensed to Florence, the community proposed to be added to the market designation, did not provided Grade B coverage to either of the communities in the existing defined market and had little if any audience in those communities, whereas the Huntsville stations provided Grade B or better coverage to and had considerable audience in Florence.

Waterloo.

(2) Lack of "Commonality" of Interest Between Dubuque and Cedar Rapids/Waterloo

Although CRTV asserted in its Petition that Dubuque is "economically integrated" with Cedar Rapids and Waterloo and that "the commercial and cultural life of [the three cities] are intimately connected, particularly with respect to media services, " other than pointing to the fact that Dubuque is within the Grade B contours of three of the four network affiliates licensed to Waterloo and Cedar Rapids, CRTV provided no facts to support its claims of economic, commercial and cultural "commonality" among the three communities. The fact is that Dubuque is not significantly "integrated" or "connected" with either Cedar Rapids or Waterloo. Dubuque is situated on the Mississippi River, and as anyone familiar with the history of the development of the American heartland knows, the commercial and cultural life of communities situated along the Mississippi is significantly different than that of communities that do not border the river. The river communities are older, having been settled earlier due to the transportation advantages afforded by the river, and they were settled for different reasons than were non river communities. Consequently, Dubuque has much more in common with the river communities of Davenport and Clinton, Iowa, and Moline and Rock Island, Illinois, than with Waterloo and Cedar Rapids. Among the significant factors which distinguish Dubuque from the other two communities are:

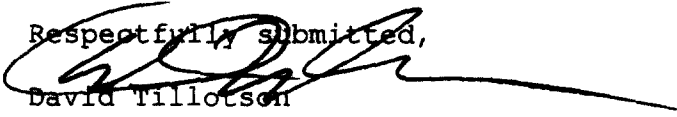
- ▶ Politically, Dubuque County is strongly Democratic whereas the rest of Iowa is Republican
- ▶ Dubuque has a strong union presence whereas Cedar Rapids and Waterloo do not

- ▶ Dubuque residents travel to "the Quad Cities" or to Chicago for out of town shopping and entertainment, not to Cedar Rapids or Waterloo
- ▶ Dubuque is adjacent to the boundaries of Wisconsin and Illinois and is part of a Tri-State trading area which extends out approximately 50 miles from Dubuque. Cedar Rapids and Waterloo are not part of this local trading area.
- ▶ Dubuque is served by two hospitals with no connection to hospitals in Cedar Rapids and Waterloo, and Dubuque's Mercy Hospital is the designated Trauma Center for Northwest Illinois.
- ▶ Dubuque's economy depends to a large extent on tourism whereas tourism is not a significant factor in the economies of Cedar Rapids or Waterloo
- ▶ Dubuque's population is approximately 75% Roman Catholic, the balance of Iowa is predominately Protestant.
- ▶ Dubuque has its own symphony, art museum, and two theaters which present local and off-Broadway productions. The three colleges in Dubuque provide additional cultural and entertainment opportunities. Dubuque does not look to Waterloo or Cedar Rapids for cultural experiences or entertainment.
- ▶ Dubuque has three Eagle Country Market stores, part of a large food store chain based in Illinois; there are no Eagle stores in Cedar Rapids or Waterloo.

III. Conclusion

For the foregoing reasons, the proposal to change the designation of the "Cedar Rapids-Waterloo, Iowa, television market to include Dubuque, Iowa, should be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing
COMMENTS OF DUBUQUE TV LIMITED PARTNERSHIP have been sent by first class
mail, postage pre-paid, this 19th day of July 1996, to:

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